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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91122524
Party	Defendant Wayne R. Gray
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Attachments	MOT TO RESUME Exhibit No. 13.pdf (7 pages)(258170 bytes) MOT TO RESUME Exhibit No. 14.pdf (7 pages)(185950 bytes) MOT TO RESUME Exhibit No. 15.pdf (13 pages)(60784 bytes) MOT TO RESUME Exhibit No. 17.pdf (2 pages)(27705 bytes)

EXHIBIT No. 13

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

**DECLARATION OF DAVID
BRADFORD**

Case No. 2:04CV00139

Judge Dale A. Kimball

I, David Bradford, declare as follows:

1. The statements made in this Declaration are based on my personal knowledge. In connection with this Declaration, I have also reviewed documents I authored or received contemporaneous to the transaction discussed herein. I have attached several of these documents as Exhibits to this Declaration.

2. I am an attorney duly licensed to practice law in the state of California. I have an undergraduate degree and JD degree from Brigham Young University. I also have an MBA from Pepperdine University.

3. I was employed by Novell, Inc. from 1985 to 2000 in various legal and business capacities. From 1987 to 2000, I was Senior Vice-President, General Counsel and Corporate Secretary. My responsibilities included overseeing legal, security, government relations and, from time to time, corporate development functions at Novell. During this period of time, I also was part of a group of executives that comprised the Executive Staff, which advised Novell's President and Chief Executive Officer regarding business decisions for the company. In addition, I was a Secretary to the Novell Board of Directors. I participated in strategic management decisions. I led Novell through a number of complex transactions, including acquisitions, asset sales and public offerings.

4. In 1995, Novell decided to sell certain UNIX-related assets that it had acquired in 1993 from AT&T's UNIX System Laboratories subsidiary. A company called Santa Cruz Operation, Inc. ("Santa Cruz") surfaced as a prospective buyer. After a series of executive-level discussions during the summer of 1995, I was tasked, in my role as Senior Vice-President and General Counsel, with overseeing the negotiation and drafting of a contract between Novell and Santa Cruz that would protect Novell's interests.

5. I retained the law firm of Wilson, Sonsini, Goodrich & Rosati, then Novell's regular outside counsel, to negotiate and draft the agreement between Novell and Santa Cruz. The Wilson team was led by Tor Braham, an experienced partner in that firm who was already

familiar with Novell's business. In fact, Tor had negotiated Novell's purchase of UNIX assets from USL in 1993.

6. I charged Tor Braham with the responsibility of putting together the necessary agreements to protect Novell's interests. He was the principal drafter of what became the Asset Purchase Agreement executed on September 19, 1995. Tor Braham communicated directly with me during the drafting and negotiation process, including sending me drafts of the Asset Purchase Agreement.

7. The Novell-Santa Cruz transaction took on a more complex form due to various concerns that arose during the course of the negotiations. For example, at the outset, Novell had been hopeful that the transaction would be a cash deal. It became apparent, however, that Santa Cruz would not be able to come up with the requisite cash to buy all of the UNIX assets that Novell had purchased from USL in 1993, as well as Novell's UnixWare business. Among other things, this resulted in an agency relationship, under which Santa Cruz would collect and pass through a revenue stream for SVRX contracts and Novell would retain control over the SVRX licensing arrangements.

8. There also arose serious concerns about Santa Cruz's viability as a company. Santa Cruz was not the most financially stable company. We thus became focused on building in protections for Novell in the event that Santa Cruz went bankrupt.

9. Because of these concerns, during the negotiations I discussed with Tor Braham the need to increase Novell's protections in the transaction, including but not limited to the need to retain Novell's intellectual property rights in UNIX and UnixWare. This retention of intellectual property rights was implemented with an eye to protecting Novell's interest in the significant revenue stream that Novell would be retaining from SVRX source code. Novell's copyright ownership would permit Novell to continue to have rights to this revenue, should Santa Cruz go bankrupt.

10. The Wilson team drafted a schedule of assets to be included in the asset transfer and a schedule of assets to be excluded from the transfer. These schedules specifically addressed how intellectual property rights in UNIX and UnixWare would be treated in the deal. Copyrights were not included as an asset; instead copyrights were specifically excluded. It is my understanding that the Wilson team exchanged these schedules with representatives of Santa Cruz prior to the execution of the Asset Purchase Agreement.

11. In its final form, the Asset Purchase Agreement executed on September 19, 1995 included a Schedule 1.1(a). Schedule 1.1(a) specifically identified the "Intellectual Property" included in the assets to be transferred; it only identified certain UNIX and UnixWare trademarks. The Asset Purchase Agreement also contained an "Excluded Assets" list in Schedule 1.1(b); this list provided that certain "Intellectual Property" was excluded from the asset transfer, including "[a]ll copyrights and trademarks, except for the trademarks UNIX and UnixWare." It also excluded "[a]ll patents."

12. The Asset Purchase Agreement means what it says: copyrights were not included as an asset; copyrights were specifically excluded from the asset transfer. The exclusion was intentional. Should any persons suggest otherwise, they are mistaken.

13. I attended the Novell Board of Directors meeting held on September 18, 1995, or the day immediately prior to the execution of the Asset Purchase Agreement. The Novell-Santa Cruz transaction was the subject of that Board meeting. As Senior Vice-President and General Counsel of Novell and as the Novell executive responsible for implementing the Novell-Santa Cruz transaction into a binding, legal contract, I participated in the discussion. I even reviewed the terms of the Asset Purchase Agreement with the Board. As Secretary to the Board of Directors, I memorialized the meeting in Board Minutes, a true and correct copy of which I attach to this Declaration as Exhibit 1. As I recorded in those Minutes that I sent to the Board of Directors, in the meeting the Board:

RESOLVED:

...

Novell will retain all of its patents, copyrights and trademarks
(except for the trademarks UNIX and UnixWare) ...

(See Exhibit 1 at 2.)

14. The Board meeting minutes are accurate in their description of the intellectual property assets Novell retained.

15. Under the Asset Purchase Agreement, Novell retained the right to receive 95% of the revenue from licenses of SVRX software. I confirmed our retention of SVRX licensing revenue to the Board of Directors in a memorandum on September 15, 1995, a true and correct copy of which I attach as Exhibit 2. I told the Board: "For example, we will be retaining our traditional royalty stream from UNIX SVRX source code which was approximately \$50 million for FY 1995." (Exhibit 2 at 1. I underscored "retaining" in my original memo.) Again, at the September 18, 1995 Board of Directors meeting, I informed the Board of this retained revenue stream, which was referred to as SVRX Royalties in the contract. (Exhibit 1 at 2.) The term SVRX Royalties was drafted so as to be broadly applicable to "all royalties, fees and other amounts" from SVRX agreements, and was not limited to monies paid under binary licenses; Novell retained 95% of all monies from SVRX agreements, source and binary included.

16. Under the Asset Purchase Agreement, Novell also retained control over the licensing arrangements with SVRX customers. As indicated in the Asset Purchase Agreement, this right applies to all SVRX Licenses; it was not restricted to binary licenses of SVRX. In particular, Novell intended to use its control over the SVRX license agreements to do "buyouts" of SVRX agreements or, if necessary, to provide source rights to Hewlett Packard in its development of a 64-bit UNIX technology -- a development effort that I memorialized in the September 18, 1995 Board Minutes. (Exhibit 1 at 1, 3.)

17. I was presented the final Asset Purchase Agreement between Novell and Santa Cruz on the day it was to be executed. I was to review it and approve it for final signature by Bob Frankenberg, Novell's CEO at the time. I reviewed the contract and considered it to reflect

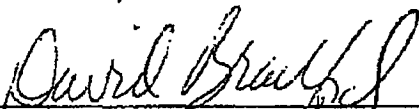
the intent that I have described above in this Declaration. Indeed, I wrote a memorandum (a true and correct copy of which I have attached as Exhibit 3), reflecting my approval of the Asset Purchase Agreement for signature by Mr. Frankenberg. I still agree with what I said nearly twelve years ago:

The purpose of this memorandum is to let you know that I have reviewed the final document and find the same to be an accurate reflection of the business and legal terms and conditions negotiated between the parties...

18. Novell has retained intellectual property rights in other transactions involving the sale of part of its business. In late 1995 and early 1996, I was part of a Novell business team evaluating the future ownership direction of Novell's TUXEDO software business, which we also had acquired from AT&T. On January 24, 1996, Novell entered into an agreement with BEA Systems, Inc., in which Novell transferred certain assets relating to its TUXEDO software product. In that transaction, Novell specifically retained the copyrights in the TUXEDO software.


I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 19th day of April, 2007 in Newport Beach California.



David Bradford

EXHIBIT No. 14

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff,

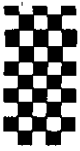
vs.

NOVELL, INC., a Delaware corporation,
Defendant.

**DECLARATION OF KELLIE
CARLTON IN SUPPORT OF
NOVELL, INC.'S MOTION TO
DISMISS**

Case No. 2:04CV00139

Judge Dale A. Kimball



Kellie Carlton, under penalty of perjury, declares the following:

1. I am responsible for maintaining the records of the meeting minutes of Novell's Board of Directors. I submit this declaration in support of Novell's Motion to Dismiss. The statements made herein are based on my personal knowledge and investigation.

2. Attached as Exhibit A is a true and correct copy of the September 18, 1995 Minutes of the Meeting of the Board of Directors of Novell, Inc. A blue box has been added on page 2 to identify the text referenced in Novell's motion papers.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 5 day of November, 2004 in Provo, Utah.

Kellie Carlton
Kellie Carlton

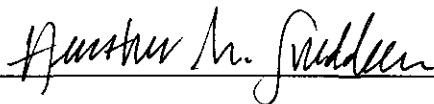
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of November, 2004, I caused a true and correct copy of the foregoing **DECLARATION OF KELLIE CARLTON IN SUPPORT OF NOVELL, INC.'S MOTION TO DISMISS** to be served via first class mail, postage prepaid, to the following:

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**MINUTES OF THE MEETING
OF THE BOARD OF DIRECTORS
OF NOVELL, INC.
MONDAY, SEPTEMBER 18, 1995**

A meeting of the Novell, Inc. Board of Directors was held on Monday, September 18, 1995 commencing at noon Mountain Time. The meeting was held pursuant to a telephone conference call. Seven of the eight Directors were present for the meeting namely: Bob Frankenberg, Jack Messman, Elaine Bond, Larry Sonsini, Alan Ashton, Ian Wilson, and John Young. Also present by invitation were David Bradford, Ty Mattingly, and Jeff Turner of Novell.

Mr. Frankenberg chaired the meeting and David Bradford served as secretary for the meeting.

**PROPOSED SALE OF UNIXWARE BUSINESS
AND EQUITY INVESTMENT IN SCO**

Mr. Bradford and Mr. Frankenberg first confirmed that the Directors present on the call had received the materials regarding several proposed transactions.

Mr. Frankenberg then provided an overview of several business transactions the Company was negotiating with Santa Cruz Operation, Inc. (SCO) and Hewlett-Packard for the purpose of strengthening UNIX on the Intel Platform. He described one of the key steps in this process as the sale of a portion of Novell's UNIXWare business to SCO. He then described a proposed structure under which Hewlett-Packard would take a leadership position in the development of 64-bit UNIX technology and, under which, Hewlett-Packard would license Novell networking services as a core component of future 64-bit UNIX.

Mr. Frankenberg next described changes in the current competitive landscape which prompted these transactions. Ty Mattingly next outlined the financial impact of Novell's sale of its UNIXWare binary business to SCO. He discussed the impact on employees of Novell's Florham Park facility and the plans to transition a portion of this headcount to SCO and Hewlett-Packard. He then described the shares of SCO stock Novell would be getting in exchange for its UNIXWare business and the future royalty arrangements.

Various questions were then posed by the Directors concerning: possible analyst reactions; impact on employees; impact on Novell's relationship with Microsoft; the ongoing viability of SCO; the impact on Novell's operating expenses; service on the SCO Board; and due diligence that had been conducted to date. Mr. Frankenberg, Mr. Mattingly, and Mr. Bradford responded to the questions and a discussion ensued.

The Directors next discussed various competitive alternatives and concluded that the transaction as structured was justifiable both from a strategic perspective as well as from a financial one. Mr. Bradford and Mr. Sonsini then reviewed the terms of the Asset Purchase Agreement between SCO and Novell. Both the financial terms of the transaction were reviewed as well as the non-financial terms including issues of Standstill, Registration rights, Board seats, Rights of First Refusal, employee severance, and what happens in the event of a change of control of either SCO or Novell. The Directors asked a variety of questions concerning the contract terms and suggestions were made to improve the terms of royalty collection from SCO.

Then, upon motion duly made, seconded, and unanimously carried, the following recitations, and resolutions were adopted:

RESOLVED: That the Board of Directors of this corporation (*Novell*) hereby determines that it is in the best interests of this corporation and its shareholders to enter into an Asset Purchase Agreement with The Santa Cruz Operation, Inc. (*SCO*).

Pursuant to the Asset Purchase Agreement, Novell will transfer to SCO its UNIX and UnixWare technology assets, a portion of the employee base in New Jersey (approximately 100 of 400 employees), equipment used in UnixWare business, and certain assumed liabilities thereto. Pursuant to the Asset Purchase Agreement, SCO will issue 6.1 million new shares of common stock to Novell. SCO will also collect and pass through to Novell 95% of the SVRX Royalties. Further, SCO will pay to Novell ongoing royalties associated with their future sale of the UNIXWARE technology as more fully set forth in the Asset Purchase Agreement.

Novell will retain all of its patents, copyrights and trademarks (except for the trademarks UNIX and UnixWare), a royalty-free, perpetual, worldwide license back to UNIX and UnixWare for internal use and resale in bundled products, Tuxedo and other miscellaneous, unrelated technology.

RESOLVED FURTHER: That the following additional terms will be part of the Asset Purchase Agreement between Novell and SCO. Novell will select an individual to be nominated for election to the Board of Directors of SCO. Novell will have the right to maintain its percentage ownership in SCO if SCO issues or sells new shares. Novell will also have a right of first refusal on the sale of SCO to any one of the following companies, or their affiliates, which are: Sun Microsystems; Microsoft, Hewlett-Packard; IBM; Digital; and Fujitsu. Novell will have demand registration rights on SCO shares purchased.

However, Novell will bear the costs of employee severance and will contribute 50% of direct Eiger development cost until such contribution reaches an aggregate of \$2.5 million. SCO is committed to shipping the new *merged product* in 1997, and SCO will support Hewlett-Packard's *white box* version of UNIX.

RESOLVED FURTHER: That the terms and conditions of the Asset Purchase Agreement as set forth therein are hereby approved, subject to such changes and modifications of a non-material nature as the proper officers of Novell may consider appropriate or necessary.

RESOLVED: That the Board of Directors of this corporation (*Novell*) hereby determines that it is in the best interests of this corporation and its shareholders to enter into a Memorandum of Understanding (*MOU*) with Hewlett-Packard Company (*HP*). The purpose of the *MOU* is to set forth the current mutual intent of Novell and HP regarding the following: HP handling the development of the 64-bit UNIX and giving the source code to SCO in two years for a shrink-wrapped version; and HP receiving license fees for the 64-bit UNIX once Novell's System V licenses its NetWare Directory Services (*NDS*) and MiddleWare to HP and SCO.

AMERICA ON LINE BOARD MEMBERSHIP

Mr. Frankenberg then outlined a proposal he received from Steve Case and Alexander Haig from America On Line to join their Board of Directors. Mr. Frankenberg reviewed the pros and cons of such service with the members of the Board. A discussion ensued. It was concluded that Mr. Frankenberg's service on the America On Line Board would have a net positive affect on Novell.

STOCK OPTION GRANT

The Board then considered the grant of stock options to various Novell employees. Then, upon motion duly made, seconded, and unanimously carried, the following resolutions were adopted:

RESOLVED: That Novell, Inc. grant to the employees listed on Exhibit "A" non-qualified stock options of 470,100 shares vesting 25 percent after one year and vesting quarterly thereafter at the rate of 6.25 percent per quarter at an option price of \$19.00 per share representing the closing price of the stock as of the last trading date (September 15, 1995) before the date of the Board Meeting; the term of said option is to be 10 years. With all of said options to be issued in accordance with the Novell, Inc. 1991 Stock Plan as amended.

ADJOURNMENT

There being no further business to come before the Board, the meeting was declared adjourned by Mr. Frankenberg at 1:30 p.m. Mountain Time.

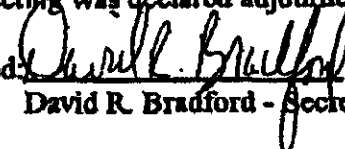
Signed: 
David R. Bradford - Secretary

EXHIBIT No. 15

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DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff and Counterclaim-
Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**MEMORANDUM IN SUPPORT OF
NOVELL'S OPPOSITION TO SCO'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON SCO'S FIRST,
SECOND, AND FIFTH CAUSES OF
ACTION AND FOR SUMMARY
JUDGMENT ON NOVELL'S FIRST
COUNTERCLAIM (COPYRIGHT
OWNERSHIP)**

*[REDACTED pursuant to the August 2,
2006 Stipulated Protective Order]*

Case No. 2:04CV00139

Judge Dale A. Kimball

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(Supp. Brakebill Decl., Ex. 50.) Novell later published that June 26, 2003 letter on its website.

(Supp. Brakebill Decl., Ex. 51, ¶ 6.)

96. Novell addressed its position in a subsequent letter, dated August 4, 2003, that “under the Asset Purchase Agreement and Amendment No. 2, copyrights were not transferred to Santa Cruz Operation unless SCO could demonstrate that such a right was ‘required for [Santa Cruz Operation]’ to exercise the rights granted to it in the APA. Santa Cruz Operation has never made such a demonstration” (Supp. Brakebill Decl., Ex. 52 (emphasis added).) Novell later published that August 4, 2003 letter on its website. (Supp. Brakebill Decl., Ex. 51, ¶ 7.)

IV. ARGUMENT

A. The Plain Language of the APA Excluded Copyrights from the Assets to Be Transferred by Novell to Santa Cruz.

1. Schedule 1.1(b) Expressly Excluded “All Copyrights” From the Transfer of Assets.

As this Court noted in its June 9, 2004 Order, “the APA specifically excluded all copyrights from the assets transferred from Novell to SCO’s predecessor.” (Order Denying Motion to Dismiss, June 9, 2004, PACER No. 29.) The APA defined the assets to be transferred by Novell to Santa Cruz by reference to lists of included and excluded assets. (Novell’s Ownership MSJ No. 1 Facts, ¶ 2.)⁹ The only “Intellectual Property” identified in the Schedule 1.1(a) list of Included Assets were UNIX and UnixWare trademarks. (Novell’s Ownership MSJ No. 1 Facts, ¶ 3.) The UNIX and UnixWare copyrights were not listed as Included Assets. (*Id.*) Conversely, the Schedule 1.1(b) list of “Excluded Assets” expressly excluded from the

⁹ The Statement of Facts in this brief will be cited as “Novell Opposition Facts.” The Statement of Undisputed Facts from Novell’s Ownership MSJ No. 1 will continue to be cited as “Novell’s Ownership MSJ No. 1 Facts.”

transferred assets “[a]ll copyrights and trademarks, except for the trademarks UNIX and UnixWare.” (Novell’s Ownership MSJ No. 1 Facts, ¶ 4 (emphasis added).)

SCO contends that this exclusion should be ignored because the APA transferred the “right, title, and interest” in UNIX and UnixWare. (SCO’s Ownership MSJ at 20-21.) SCO cites a series of cases purportedly holding that those magic words automatically transfer all copyrights. In fact, those cases support Novell’s position, not SCO’s, because those cases specifically distinguish the situation where the agreement expressly excludes copyrights. SCO principally relies on *Shugrue v. Continental Airlines*, 977 F. Supp. 280 (S.D.N.Y. 1997). There, the court found that the sale of “all right, title, and interest” in all of the seller’s computer software transferred the copyrights in that software because “[n]o exception was carved out for copyrights” and “no rights, titles, or interests were retained.” *Id.* at 285. Similarly, both of the other cases on which SCO relies specifically note the lack of any specific provisions excluding or discussing copyrights. *Relational Design & Tech., Inc. v. Brock*, No. 91-2452-EEO, 1993 WL 191323, at *6 (D. Kan. May 25, 1993)¹⁰ (“The original contract is devoid of any language excluding copyright law”); *Schiller & Schmidt, Inc. v. Nordisco Corp.*, 969 F.2d 410, 413 (7th Cir. 1992) (noting that “the agreement does not mention the word ‘copyright’”).¹¹ SCO cannot escape the plain language of the APA, which excludes “all copyrights.”

¹⁰ Pursuant to DUCivR 7-2, a copy of *Relational Design & Tech., Inc. v. Brock*, No. 91-2452-EEO, 1993 WL 191323, at *6 (D. Kan. May 25, 1993) is attached hereto as Exhibit B.

¹¹ SCO also cites *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081 (9th Cir. 1989). That case holds that a copyright owner should not be presumed to have transferred outright ownership of the copyrights when it grants a license. *Id.* at 1088. That supports Novell’s position, not SCO’s. Novell retained “all copyrights,” while granting a license to copy, use, and otherwise carry out the UNIX business to Santa Cruz.

Novell team the fact that “retaining the UNIX copyrights would facilitate Novell’s exercise of rights with respect to capitalizing the SVRX revenue stream.” (*Id.*)

Moreover, Novell’s Board of Directors specifically ratified the exclusion of copyrights. The day before the execution of the APA, Bradford explained the terms of the APA to the Board and the Board approved the transaction. (Novell’s Opposition Facts, ¶ 76.) The Board minutes specifically note the exclusion of copyrights, stating: “RESOLVED: Pursuant to the Asset Purchase Agreement, . . . Novell will retain all of its patents, copyrights and trademarks (except for the trademarks UNIX and UnixWare)” (*Id.*)

2. SCO Presents No Evidence to the Contrary from Anyone Involved in the Negotiation of the Intellectual Property Provisions of the APA.

SCO does not provide contrary testimony from a single witness involved in drafting or negotiating the intellectual property provisions of the APA. The persons involved in drafting and negotiating those provisions for Novell were Tor Braham, Aaron Alter, and Shannon Whisenant. (Novell’s Opposition Facts, ¶ 32.) Jeff Higgins, of Brobeck Phleger & Harrison, represented Santa Cruz in APA contract negotiations and received at least one draft of the Included and Excluded Assets schedules, in which copyrights were omitted from the Included Assets and expressly listed as Excluded Assets. (*Id.*)

Instead, SCO relies on testimony of those who had no involvement in the negotiation or drafting of the contractual language at issue:

- Robert Frankenberg, Novell’s former CEO, testified that he delegated the drafting of the APA to the negotiation team and relied on their recommendation in signing it. (Novell’s Opposition Facts, ¶¶ 33-36.)
- Ty Mattingly, Novell’s former Vice President for Strategic Relations, testified his role was limited to “high level business

press release. (*Id.*) In fact, Novell published its own separate press releases concerning the APA in September 1995 and December 1995, both of which were produced to SCO and are publicly available on Novell's website. Neither of those press releases mentions any transfer of intellectual property or copyrights. (*Id.* at ¶ 70.)

To the extent that the press release's reference to unspecified "intellectual property" is interpreted to mean that the APA transferred all forms of intellectual property relating to UNIX or UnixWare (including trademarks, patents, and copyrights), that statement is indisputably incorrect. The APA did transfer UNIX and UnixWare trademarks to Santa Cruz (to the extent owned by Novell), but explicitly excluded "all patents" and "all copyrights." The witnesses on which SCO relies have admitted that the APA did not transfer UNIX and UnixWare patents to Santa Cruz. (*Id.* ¶ 71.) Moreover, Novell employees at the time used the term "intellectual property" to refer to

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(*Id.* ¶ 72.) To the extent that the press release is interpreted to include all copyrights and patents, the press release is simply incorrect and does not change the fact that copyrights and patents were excluded from the transfer.

V. CONCLUSION

The APA explicitly excluded "all copyrights" from the assets to be transferred by Novell to Santa Cruz. SCO's attempt to rewrite "all copyrights" as "some copyrights" fails because it is contrary to the plain language and to the parol evidence rule. It is also contrary to the intent of the parties, as described by those actually involved in the drafting and negotiation of the "all copyrights" language. SCO's reliance on Amendment No. 2 is also misplaced, because outright copyright ownership is not "required for" SCO to operate the UNIX and UnixWare business.

Moreover, Amendment No. 2 did not transfer ownership of any copyrights and was never intended to do so.

For all of these reasons, Novell requests that the Court deny SCO's motion for partial summary judgment on its First, Second, and Fifth Causes of Action and its motion for summary judgment on Novell's First Counterclaim.

DATED: May 14, 2007

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EXHIBIT No. 17

From: Larry Bouffard
To: WASHINGTON DC.DC.SOBENCHA
Date: 10/18/95 7:44pm
Subject: Government contract info for SCO -Reply

We are obligated to give Sco all information, contracts, assets etc. pertaining to the UnixWare business and the old UNIX source code business. They have bought it lock, stock and barrel. Once the transaction is closed (Nov.-Dec.) we will have no more involvement with this business. Therefor, if a contract is for UnixWare or UNIX, it will be SCO's. If a contract is for UnixWare and lets say NetWare, the UnixWare part is theirs. Since we do not want to disclose our NetWare deal's T's and C's, we are looking into whether or not we give them a copy of the agreement with the words pertaining to NetWare blacked out, or just provide them a synopsis of the terms and conditions. Hopefully we will have an answer soon. In the mean time, providing them any and all information on the UnixWare or UNIX deals is the right thing to do.

Larry

CC: SUMMIT.SMT-DESKTOP2.LEVINE